

RECEIVED

JUL - 2 1992

TELEPHONE
(202) 785-2800

TELECOPIER
(202) 785-2804

LAW OFFICES
SMITHWICK & BELENDIUK, P.C.

1990 M STREET, N.W.
SUITE 510
WASHINGTON, D.C. 20036

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
J. DANIEL GILLICK
(ADMITTED IN VIRGINIA ONLY)

ORIGINAL
FILE

July 2, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

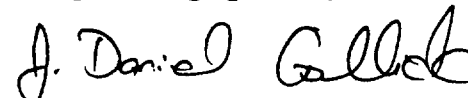
RE: MM Docket No. 92-121
Jamie Leigh Coberly
File No. BPH-910225MH
Rosamond, California

Dear Ms. Searcy:

Transmitted herewith, on behalf of Jamie Leigh Coberly, applicant for construction permit for a new FM station at Rosamond, California, are an original and six copies of a "Motion to Accept Late-Filed Notice of Appearance" in the above-referenced FM proceeding.

If there are any questions with respect to this matter, please communicate with the undersigned.

Very truly yours,



J. Daniel Gillick
Counsel for
JAMIE LEIGH COBERLY

JDG/pn
Enc.

cc: As per Certificate of Service
Ms. Jamie Leigh Coberly

No. of Copies rec'd
List A B C D E

0+6

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

JUL - 2 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 92-121
ROSAMOND RADIO, INC.)	File No. BPH-910225MG
JAMIE LEIGH COBERLY)	File No. BPH-910225MH
DIANE K. HITT)	File No. BPH-910225MI
For Construction Permit)	
for a New FM Station on)	
Channel 228A)	
in Rosamond, California)	

TO: Honorable Joseph P. Gonzalez
Administrative Law Judge

MOTION TO ACCEPT LATE-FILED NOTICE OF APPEARANCE

Jamie Leigh Coberly ("Coberly"), by her attorney, respectfully requests the Presiding Judge to accept her late-filed Notice of Appearance. Good cause exists for this request.

On July 1, 1992, applicants in the above-captioned proceeding were required to file their respective Notices of Appearance. On July 1, 1992, Coberly prepared a "Contingent Notice of Appearance" since the parties were filing a Joint Request for Approval of Settlement Agreement with the Commission. However, due to an administrative oversight, Coberly's "Contingent Notice of Appearance" was not timely filed. By 3:00 p.m. on July 1, Coberly's Notice of Appearance was prepared, and ready for filing with the Commission. However, on the afternoon of July 1, 1992, the paralegal who prepared the pleading did not place the filing in the law firm's "to be filed" bin. The paralegal

discovered her error at 5:30 p.m., when it was too late to file the pleading.

Good cause exists for accepting Coberly's Notice of Appearance. First, the Notice of Appearance is being filed only one day late, July 2, 1992. All parties on the Certificate of Service list were either delivered Coberly's Notice of Appearance by hand or were mailed a copy of the Notice on July 1, 1992. Second, neither of the other applicants in the proceeding, Rosamond Radio, Inc. ("Rosamond"), and Diane K. Hitt ("Hitt"), will be prejudiced by Coberly's late-filed Notice of Appearance. The parties in the proceeding have agreed to a universal settlement and, as a result, a Joint Request for Approval of Settlement Agreement was filed with the Commission on July 1, 1992. Counsel for Rosamond, Hitt, and Bureau counsel have been notified that this pleading will be filed. In addition, counsel for Rosamond and Hitt have graciously informed undersigned counsel that they will interpose no objection to Coberly's request.

In St. Croix Wireless Company, 3 FCC Rcd 4073 (1988), the Commission determined that an ALJ's dismissal of an applicant that had filed an untimely Notice of Appearance was unduly harsh. The Commission specifically held:

-- where the parties have entered into a universal settlement, the proceeding is being terminated, and there will be no prejudice to other parties or the public -- it is appropriate that leniency attach to the requirement for filing the notice of appearance, and settlement agreements can be approved contingent on the filing of the required notice. St. Croix Wireless Company, supra, at 4074.

The Commission's rationale in St. Croix Wireless is applicable to the instant proceeding. In addition, this is not a case where Coberly, by filing her Notice of Appearance one day late is, attempting to abuse the Commission's processes, seeking an unfair advantage or employing applicant gamesmanship, as in Silver Springs Communications, 3 FCC Rcd 5049 (Rev. Bd. 1988), rev. den., 4 FCC Rcd 4917 (1989).

WHEREFORE, in light of the foregoing, Coberly respectfully requests the Presiding Judge to accept her late-filed Notice of Appearance. The Notice of Appearance is being filed one day late due to an administrative error, no party is prejudiced by its late-filing, a Joint Request for Approval of Settlement has been filed with the Commission, and the proceeding will be terminated contingent upon the Commission's approval of the Joint Request.

Respectfully submitted,

JAMIE LEIGH COBERLY

By: J. Daniel Gillick
Gary S. Smithwick
J. Daniel Gillick
Her Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
(202) 785-2800

July 2, 1992

CERTIFICATE OF SERVICE

I, Patricia A. Neil, a secretary in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 2nd day of July 1992, copies of the foregoing were mailed to the following:

Honorable Joseph P. Gonzalez*
Administrative Law Judge
Federal Communications
Commission
2000 L Street, N.W., Rm
Washington, DC 20554

Gary Schonman, Esquire*
Federal Communications
Commission
2025 M Street, N.W. #7212
Washington, DC 20554

Thomas Schattenfield, Esquire
Arent Fox Kintner Plotkin &
Kahn
1050 Connecticut Ave. N.W.
Washington, DC 20036
Counsel for
Rosamond Radio, Inc.

John F. Garziglia, Esquire
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, DC 20006
Counsel for
Diane K. Hitt

*By Hand


Patricia A. Neil